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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

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No. 854

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JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company,

*Petitioners,*

vs.

BUCKBEE, MEARS COMPANY,

*Respondent.*

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## BRIEF OF RESPONDENT.

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The cause is before the court on writ of certiorari to the Supreme Court of Minnesota. The decisions of that court called in question are reported in 166 Minn. 285, 207 N. W. 724, and 211 N. W. 478. They are set out in full in the record. (R., f. 29, p. 18, and f. 59, p. 41.)

## THE FACTS

The Employers Mutual Insurance and Service Company is an insurance company organized under the laws of

the State of Maryland. Until suspension of operations, it was engaged in the business of writing insurance known as "strike insurance." (R., f. 5, p. 3.)

Some time during October, 1920, a representative of the company came to Minnesota. A meeting of printers, lithographers and engravers was arranged by him. The meeting was held in the City of St. Paul and was addressed by the representative. He made certain representations, and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the Employers Mutual Insurance and Service Company, and at such meeting he furnished those present with blanks forms of application for membership and insurance in the company. An officer of Buckbee, Mears Company, hereinafter referred to as respondent, a Minnesota corporation, engaged in the photo engraving business with its principal place of business and only factory located at St. Paul, was present at the meeting, received one of the blank forms, caused the same to be filled out, and sent the same, with the check of his company in the amount of the initial premium deposit, to the home office of the company at Baltimore. Thereupon a policy or contract was written at the home office of the company and mailed to the Buckbee, Mears Company, addressed to its office in St. Paul. (R., f. 48, p. 26.)

As a result of the representations made and the propaganda presented by the aforesaid representative of the Employers Mutual Insurance and Service Company at the meeting aforesaid, several printers, lithographers and engravers, in addition to respondent, all citizens of the State of Minnesota, with their places of business within such state, filled out blank forms of application for membership and insurance in the company furnished to them at the meeting by such representative, and mailed the same with checks covering the initial premiums deposits to the home office of

the company at Baltimore, Maryland. Thereafter policies or contracts similar to the one issued to respondent were executed by the Employers Mutual Insurance and Service Company at its home office, and mailed to such printers, lithographers and engravers. (R., f. 48, p. 26.)

The insurance company in question had not at the time of the insurance of the policies and contracts mentioned, nor did it at any time thereafter, comply with the various statutes of Minnesota with respect to foreign insurance companies writing insurance on risks within the state. In other words, the insurance company was not at the time it issued the policy or contract of insurance to respondent, nor at the time it issued any of the policies or contracts of insurance referred to, qualified under the laws of Minnesota to transact an insurance business within the state. (R., f. 47, p. 25.)

The statutes referred to provide, among other things, that a foreign insurance company before transacting an insurance business in the state shall—

1. Secure a license or permit from the State Insurance Commissioner authorizing it to transact such business in the state.

2. Deposit with the Commissioner a certified copy of its charter or certificate of incorporation, or of its by-laws, and statement showing its financial condition and business, verified by its president and secretary or other proper officers.

3. Furnish the Commissioner with satisfactory evidence of its legal organization and authority to transact the proposed business, and that its capital, assets, deposits with the proper official in its own state, amount insured, number of risks, reserve and other securities, and guaranties for protection of policy

holders, creditors and the public, comply with those required of like domestic companies.

4. Execute and file an instrument in the office of the Commissioner, constituting and appointing the Commissioner and his successor in office its true and lawful attorney upon whom proofs of loss, any notice authorized or required by any contract with such company to be served upon it, summonses and all lawful process in any action or legal proceeding may be served.

5. Appoint as its agents in this state residents thereof.

6. Make a deposit of securities with the Insurance Commissioner for the protection of Minnesota policyholders or file with the Insurance Commissioner of the state of its organization that it has deposited with him securities in a sum equal to at least $100,000.00 for the protection of all of its policyholders, wherever situated.

7. Solicit insurance in this state only through licensed agents and licensed pursuant to application made by the company. 3318,

See Sections 3310, 3312, 3314, 3319, and 3711 to 3722, General Statutes of Minnesota 1923, and Chapter 380 Laws of Minnesota 1921.

The policy of insurance issued to respondent was issued on or about October 22, 1920. Under the terms thereof, the Employers Mutual Insurance and Service Company agreed to indemnify the respondent for one year against loss sustained by respondent, and caused by a strike of all or a part of respondent's employes, subject to the terms and conditions set forth in the policy; and in consideration thereof respondent paid to the company a premium deposit of $633.60, and agreed to pay to the company such further sums as might from time to time be assessed on the policy by the board of directors of the company in conformity with

the articles of incorporation and by-laws of the company, provided that such further sum should not in any case be more in any one policy year than an amount equal to the premium deposit of such policy year. (R., f. 7, p. 4.) During the period from May, 1920, until May, 1921, many strikes arose in various parts of the country, and many members and policyholders of the company suffered loss by reason thereof and became entitled to make and did make large claims for such losses against the company. Such losses covered by policies of insurance of the company for which claims were made approximated six million dollars, whereas the total assets did not exceed one-fourth of such amount. (R., f. 9, p. 5.)

At meetings of the board of directors of the company held during May and June, 1921, resolutions were passed, levying a 100% assessment on all policyholders. Notice of this assessment was thereafter and on or about June 30, 1921, given to respondent, and demand made that such assessment be paid. (R., f. 10, p. 6.)

On August 26, 1921, a bill of complaint was filed by the Insurance Commissioner of the State of Maryland against the company in Circuit Court No. 2 of Baltimore City, Maryland, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of receivers. (R., f. 6, p. 3.)

On November 9, 1921, the court upon consideration of the bill of complaint and other papers filed, and after the company had in open court admitted insolvency, made its order appointing petitioners receivers of the company, with power and authority to take possession of the property and assets of the company and to collect the outstanding debts due the company, including all assessments legally assessed against its policyholders. (R., f. 6, p. 3.) On June 6, 1924, the court, by order, authorized the receivers to bring suits

in an attempt to force the collection of all unpaid assessments due the company. (R., f. 7, p. 4.)

Pursuant to these orders of the Maryland Court, the receivers, petitioners herein, commenced this action to recover the assessment of $653.60 levied against respondent as aforesaid.

The action was commenced in the District Court of Minnesota, Second Judicial District, and was tried to the court upon the pleadings and a stipulation of facts. The trial court made findings and ordered judgment for petitioners. A motion was made for a new trial, and denied. Respondent took an appeal to the Supreme Court of Minnesota, and that court reversed the lower court and sent the case back for a new trial. Upon the second trial, the case was again submitted to the court upon the pleadings and a stipulation of facts, and the lower court, in harmony with the decision of the Supreme Court, made findings and ordered judgment for respondent. An appeal from this judgment was taken to the Supreme Court by petitioners, and the Supreme Court, adhering to its former decision, affirmed the judgment. Thereafter application was made to this court for a writ of certiorari to the Supreme Court of Minnesota to review its judgment. The application was granted, and the decisions of the Supreme Court of Minnesota are here for review.

The stipulation of facts on which the case was submitted to the trial court the second time commences at folio 47, page 25 of the Record; the policy of insurance in question attached to and made a part of the stipulation commences at folio 50, page 27 of the Record.

## THE ISSUE

*Have peitioners a right under the Constitution of the United States to prosecute their action against respondent in the courts of Minnesota?*

## ARGUMENT

### I.

### A CHANCERY RECEIVER HAS NO POWER AS OF RIGHT TO SUE IN THE COURTS OF A JURISDICTION FOREIGN TO THAT OF HIS APPOINTMENT.

The Supreme Court of Minnesota has refused petitioners access to the courts of Minnesota. This is the sum and substance of its decisions. The question upon final analysis, as we view the case, is whether such refusal violates the full faith and credit clause of the Constitution, Section 1 of Article IV. We thus limit the scope of the review, notwithstanding the contention of petitioners that such refusal not only violates Section 1 of Article IV, but deprives them of rights guaranteed by Section 2 of Article IV, and results in an abridgment of privileges possessed by them as citizens of the United States, in a taking of their property without due process of law, and in a denial to them of the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment. The privileges and immunities, due process and equal protection clauses of the Constitution have nothing to do with the case. This becomes apparent on a moment's reflection. Petitioners seek access to the Minnesota courts, not in their status as citizens of the United States and of the states of which they are citizens, but as receivers of the Employers Mutual Insurance and Service Company, a Maryland corporation, holding their appointment with power to sue those indebted to the company, by virtue of orders of Circuit Court No. 2 of Baltimore City, Maryland, made and entered in an action commenced and prosecuted in that court for an injunction restraining the company from further carrying on bus-

iness and for the appointment of receivers. The general ground for the relief sought was the insolvency of the company. Privileges and immunities as used in Section 2 of Article IV and Section 1 of the Fourteenth Amendment pertain exclusively to citizenship. Petitioners sue as receivers. Such privileges as are guaranteed to them as citizens, whether of the nation or a state, are in no way involved. As will be presently pointed out, they are ordinary chancery receivers; they constitute but an arm of the court appointing them. Due to this fact, the due process and equal protection provisions of Section 1 of the Fourteenth Amendment are not invocable in their behalf. The sole question, as we view the situation, and as heretofore stated, is whether the decisions of the Minnesota Supreme Court do violence to Section 1 of Article IV of the Constitution, which provides that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.

The status of petitioners is shown by the allegations of their complaint and reply.

We quote from the complaint as follows:

> "(a) The Employers Mutual Insurance and Service Company is a mutual insurance company, organized and existing under the laws of the State of Maryland, and was at the time the cause of action herein set forth arose, engaged in the business of writing insurance known as 'strike insurance.'
>
> "(b) On August 26, 1921, a bill of complaint was filed by Thomas J. Keating, Insurance Commissioner of the State of Maryland, against Employers Mutual Insurance and Service Company in the Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of Receivers.

"(c) On November 9, 1921, the said Circuit Court No. 2 of Baltimore City, upon consideration of the said bill of complaint and the other papers filed and after the Employers Mutual Insurance and Service Company had in open court admitted insolvency, passed an order appointing the Plaintiffs herein Receivers of the said Employers Mutual Insurance and Service Company, with power and authority to take charge and possession of the real estate, goods, merchandise, moneys, books, papers and checks of or belonging to the said Employers Mutual Insurance and Service Company and to collect the outstanding debts due to the said corporation, including all assessments legally assessed against its policyholders. *" (R., f. 5, p. 3.) We quote from the reply as follows:

" * * * that this action is brought by the Receivers of said Insurance Company as officers of Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, * * * * ." (R., f. 15, p.9.)

From these allegations it is clear that petitioners are ordinary chancery receivers. A chancery receiver has no legal status outside the territory or jurisdiction of the court appointing him. He receives his powers from the court, and can only exercise them within its jurisdiction. The court itself has no power beyond the bounds of its jurisdiction, and can confer none upon the receiver. And it is well settled that such a receiver has no power as of right to sue in the courts of a jurisdiction foreign to that of his appointment. He is considered merely as an officer of the court which appoints him. As said by Mr. Justice Van Devanter in Converse v. Hamilton, 224 U. S. 243, 32 Sup. Ct. 415, 56 L. Ed. 749, Ann. Cas. 1913D 1292:

"It is true that an ordinary chancery receiver is a mere arm of the court appointing him, is invested with no estate in the property committed to his charge, and

is clothed with no power to exercise his official duties in other jurisdictions." (224 U. S., p. 256).

*Booth vs. Clark*, 17 How. 322, 15 L. Ed. 164;
*Hale v. Allinson*, 188 U. S. 56, 47 L. Ed. 380, 23 Sup. Ct. 244;
*Great Western Min. & Mfg. Co. v. Harris*, 198 U. S. 561, 49 L. Ed. 1163, 25 Sup. Ct. 770;
*Catlin v. Wilcox Silver Plate Co.*, 123 Ind. 477, 24 N. E. 250, 18 A. S. R. 338, 8 L. R. A. 62;
*Hunt v. Columbian Ins. Co.*, 55 Me. 290, 92 Am. Dec. 592;
*Robertson v. Staed*, 135 Mo. 135, 36 S. W. 610, 58 A. S. R. 569, 33 L. R. A. 203;
*Frink v. Nat'l Mutual Fire Ins. Co.*, 90 S. C. 544, 74 S. E. 33, Ann. Cas. 1913D 221;
*Sercomb v. Catlin*, 128 Ill. 556, 21 N. E. 606, 15 A. S. R. 147;
*Wyman v. Eaton*, 107 Ia. 214, 77 N. W. 865, 70 A. S. R. 193, 43 L. R. A. 695;
*Castleman v. Templeman*, 87 Md. 546, 40 Atl. 275, 67 A. S. R. 363, 41 L. R. A. 367;
*Commercial National Bank v. Motherwell Iron, Etc. Co.*, 95 Tenn. 172, 31 S. W. 1002, 29 L. R. A. 164;
*Dillingham v. Traders' Ins. Co.*, 120 Tenn. 302, 108 S. W. 1148, 16 L. R. A. (N. S.) 220;
*Hardee v. Wilson*, 129 Tenn. 511, 167 S. W. 475, Ann. Cas. 1916A 94;
*Grogan v. Egbert*, 44 W. Va. 75, 28 S. E. 714, 67 A. S. R. 763.

In the case of Hale v. Allinson, the court held that a receiver, appointed by a court of equity in the exercise of its general jurisdiction, could not, by virtue of his appointment and the direction to sue contained therein, maintain a suit in equity in a foreign jurisdiction to enforce the statutory liability of stockholders in an insolvent corporation. During the course of its opinion the court said:

"We are thus brought to the fact that this is a

plain and simple case of the appointment, authorized by statute, of a receiver by a court of equity in the exercise of its general jurisdiction as such court, with no title to the fund in him, and where such receiver acts simply as the arm of the court without any other right or title; and the question is whether, in these circumstances, a receiver can maintain this suit in equity in a foreign state by virtue of his appointment, and the direction to sue contained in the decree in the case in which he was appointed a receiver? We pursue the subject after the decision of Evans v. Nellis, 187 U. S. 271, ante, 173, 23 Sup. Ct. Rep. 74, only because of the argument made by counsel for appellant, that such a receiver as in this case is not prevented by the statute or decisions of Minnesota, from maintaining such an action as this, and that, if the statute do not prevent it, he may maintain an action of this nature notwithstanding the former decision, of this court in Booth v. Clark, 17 How. 322, 15 L. Ed. 164, which it is claimed, has been, if not overruled, at least shaken in principle by the decisions as to the comity which is said to prevail among the different states to permit such an action by a receiver outside the jurisdiction of the state of his appointment. We do not think anything has been said or decided in this court which destroys or limits the controlling authority of that case.

"It was there held that an ordinary receiver could not sue in a foreign jurisdiction, and an elaborate examination was made by Mr. Justice Wayne of the principles upon which the decision was founded. In speaking of the right of a receiver appointed under a creditors' bill in New York, to bring an action in a foreign state, it was said, in the course of the opinion, as to such a receiver, 'whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery, as they may be, his official relations to the court are the same. A statute appointment neither enlarges nor diminishes the limitation upon his action. His responsibilities are unaltered. Under either kind of appointment, he has at most only

a passive capacity in the most important part of what it may be necessary for him to do, until it has been called by the direction of the court into ability to act. He has no extra-territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court of another jurisdiction, as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek.' This statement has not been overruled or explained away by any subsequent decision of this court to which our attention has been called." (188 U. S., p. 67).

In the case of Great Western Min. & Mfg. Co. v. Harris, the court held that the receiver of a corporation with no other title to its assets and property than that derived from his appointment in a suit brought to adjudicate and enforce liens, and subject the property to the payment of the claims of creditors, could not be empowered by the court of his appointment to sue in a foreign jurisdiction, either in his own name or in that of the corporation, to realize its assets. During the course of its opinion the court said:

"As to the power of the court to authorize the receiver to sue, we think the case is ruled by Booth v. Clark, 17 How. 338, 15 L. Ed. 170, in which case the authority of the court to authorize a receiver appointed in one jurisdiction to sue in a foreign jurisdiction was the subject of very full consideration. In that case it was held that a receiver is an officer of the court which appoints him, and, in the absence of some conveyance or statute vesting the property of the debtor in him, he cannot sue in the courts of a foreign jurisdiction upon the order of the court which appointed him, to recover the property of the debtor." (198 U. S., p. 574).

The court, in this case, gave consideration to the case of

Great Western Teleg. Co. v. Purdy, 162 U. S. 329, 40 L. Ed. 986, 16 Sup. Ct. Rep. 810, where the receiver of a defunct corporation appointed by a state court of Illinois brought suit in a state court of Iowa to recover an assessment upon stock, and in relation thereto, said:

> "It is urged that jurisdiction in this case is sustained by the case of Great Western Teleg. Co. v. Purdy, 162 U. S. 329, 40 L. Ed. 986, 16 Sup. Ct. Rep. 810, in which it was held that the assets and affairs of an insolvent corporation being in the hands of a receiver, the court might direct the calls or assessments upon delinquent shareholders who had not paid for their shares, thereby using the authority the directors might have exercised before the appointment of the receiver. In that case, a receiver appointed by the circuit court of Cook county, in Illinois, under the direction of that court brought an action in the name of the Great Western Telegraph Company, an Illinois corporation, by its receiver, against Purdy, a citizen of Iowa, to recover a sum alleged to be due from him upon an assessment upon his stock subscription, and it was held that the Illinois court might make the assessment and calls necessary to collect the stock which would be binding in another court. The jurisdiction of the Iowa court was not called in question in the state court of Iowa, where the original action was brought, nor was the question of jurisdiction raised in this court, or passed upon in deciding the case. While not detracting from the authority of that case as to the matter decided, we see nothing in it to indicate that, had the question herein presented been made, it would have been decided otherwise than here indicated." (198 U. S., p. 577).

It is clear from the authorities cited that the receivers in the case at bar have no right as a matter of constitutional law to sue in the courts of Minnesota. Whether the Supreme Court of our state should permit this action to be prosecuted because of the principle of comity between the states is a question exclusively for our Supreme Court to

decide. As just stated the right to maintain it is not founded on any provision of a federal nature. Our Supreme Court has declined to permit petitioners to prosecute their suit. This, it would seem, ends the case.

In the case of Finney v. Guy, 189 U. S. 335, 47 L. Ed. 839, 23 Sup. Ct. 558, the court said:

> "Whether, aside from the federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states, is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a federal nature, and we cannot supervise the action of the Wisconsin court in this particular." (189 U. S., p. 345).

## II.

## ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONERS ARE OF THE CLASS OF RECEIVERS INVOLVED IN CONVERSE V. HAMILTON, 224 U. S. 243, 56 L. Ed. 749, 32 Sup. Ct. 415, STILL THEY ARE WITHOUT CONSTITUTIONAL RIGHT TO MAINTAIN THE SUIT IN QUESTION IN THE MINNESOTA COURTS.

It is conceded that the Employers Mutual Insurance and Service Company was not at the time of the issuance of the policies in question qualified to do an insurance business within the State of Minnesota, it having failed to comply with the various provisions of the Minnesota statutes relative thereto. A state has the right to specify by statutory law what must be done by a foreign corporation before it may be permitted to do business within its borders; and when a foreign corporation fails to qualify itself to do business in a particular state, then it has no right founded

on any principle of constitutional law to prosecute actions in the courts of such state involving business transacted therein. Crutcher v. Kentucky, 141 U. S. 59, 35 L. Ed. 649, 11 Sup. Ct. 851; Doyle v. Continental Ins. Co., 94 U. S. 535, 24 L. Ed. 148; Ducat v. Chicago, 10 Wall. 410, 19 L. Ed. 972; Liverpool Ins. Co. v. Mass., 10 Wall. 573, 19 L. Ed. 1029; Am. Ins. Co. v. King Lbr. etc. Co., 250 U. S. 2, 63 L. Ed. 810, 39 Sup. Ct. 431; Interstate Amusement Co. v. Albert, 239 U. S. 560, 60 L. Ed. 439, 36 Sup. Ct. 168, and cases therein cited.

Had the Employers Mutual Insurance and Service Company itself instituted the action against respondents, the courts clearly could have refused to entertain the suit. The petitioners, assuming that they as receivers stand in the place of the Employers Mutual Insurance and Service Company, are in no different or better position than the company would be. They can do no more than their assignor; their assignor being without a right to sue, they are without such right. Barker v. Lamb, 99 Ia. 265, 68 N. W. 686, 34 L. R. A. 704; Swing v. Weston Lumber Co., 140 Mich. 344, 103 N. W. 816; Rose v. Kimberly, etc. Co., 89 Wis. 545, 62 N. W. 526, 46 Am. S. R. 855, 27 L. R. A. 556, 32 C. J. 998, and cases cited.

But petitioners argue that the Employers Mutual Insurance and Service Company was not doing an insurance business within Minnesota in issuing the policies in question; and that by reason thereof, petitioners are entitled to sue in the courts of this state. In support of their contention, they cite and rely on the case of Minn. Comm. Men's Assn. v. Benn, 261 U. S. 140, 67 L. Ed. 573, 43 Sup. Ct. 293. In the Benn case the only office maintained by the Association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership

which, when filled out, were sent to the home office and submitted to the board of directors for approval; Benn's application was sent by letter from Kalispel, Montana to Minneapolis, was approved and a certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertising through the solicitation of older members who were urged to furnish lists of prospects and to use their influence to increase the members, but no member had authority to bind the Association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors, and losses were settled by checks on Minneapolis banks mailed from the home office. From these facts the court held that the Association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on certain state officers, hence a personal judgment against the Association based on such service was void for want of jurisdiction. It is to be noted that the court did not have under consideration statutes such as those here involved—statutes requiring foreign insurance companies to meet certain requirements and to do certain things before transacting an insurance business in the state. The statute there under consideration was one providing that any corporation doing business in Montana "may be served with summons by delivering a copy of the same to the President, Secretary, Treasurer, or other officer of the corporation, or other agent designated by such corporation. * * * And if none of the persons abovenamed can be found in the State of Montana, and an affidavit stating that fact shall be filed in the office of the Clerk of Court in which such action is pending, then the Clerk of Court shall make an order authorizing the service of summons to be made upon the Secretary of State who

shall be and is hereby constituted an agent and attorney in fact to accept service on behalf of such corporation, and service upon said Secretary of State shall be deemed personal service upon said corporation." The question presented was whether the insurance company had transacted business in Montana within the meaning of the words "doing business" as used in this statute; and the court held that the company did not do business in Montana within the meaning of the words "doing business" as used in such statute merely because new members were solicited by old ones residing in the state, who had no authority to obligate the company through any contract.

It is our contention that the Employers' Mutual Insurance and Service Company, in entering into the contracts of insurance with the respondent and others, engaged in the transaction of an insurance business within the state. In the Benn case, the only fact upon which it could have been found that the insurance company was doing business within the state of Montana was that old members solicited new ones without authority to bind the company. The situation is entirely different in the case at bar. Here a representative of the Employers Mutual Insurance and Service Company came to the state, calling a meetings of printers, lithographers and engravers, and at such meeting solicited those present to take out insurance in the Employers Mutual Insurance and Service Company, and furnished them with blank forms of application for insurance in such company. As a result of his activities, policies were issued to respondent and others. We take the position that the activities of this representative constituted the transaction of an insurance business in Minnesota. The contracts issued by the company to respondent and others obligated the company to defend suits or other legal proceedings brought against their assureds by striking employees to enforce claims for damages or for payments arising out of or by

reason of strikes covered by the policies. It was clearly contemplated that the company, by and through its agents, would come into the state and defend such suits and legal proceedings. The contracts clearly contemplated also the adjustment of losses within the state necessitating the sending by the company of its agents into the state for the purpose of adjustment. The contracts also provided for the adjustment of losses by appraisement in case of disagreement, necessitating activities within the state on the part of the agents of the company. In addition to these things the contracts provided that the assureds should permit the company to inspect their plants and property and go over their books of account, bills, invoices and so forth. Obviously the plants could not be inspected and the books of account, bills, invoices and so forth examined, without the agents of the company coming into the state for such purposes. The contracts did not specify where losses were to be paid. In this situation, under the rule of the case of Penn Lumbermen's Mutual Life Insurance Company v. Meyer, 197 U. S. 407, 49 L. Ed. 810, 25 Sup. Ct. 483, the losses under these contracts were payable at the domiciles of the assureds all situated within the State of Minnesota. All of these things distinguish the case at bar from the Benn case; and to our minds are conclusive that the Employers Mutual Insurance and Service Company did actually transact an insurance business within the State of Minnesota.

See Penn Lumbermen's Mutual Fire Insurance Company v. Meyer, supra.

A determination of the question whether the company was doing business, under the facts and statute in the Benn case, is entirely different from a determination of the question whether the company in the case at bar, under the facts and statutes thereof, was doing business. In the Benn case the only statute under consideration was one providing the

method of securing jurisdiction over foreign insurance companies; and it was provided by this statute that where a foreign insurance company was doing business within the State of Montana, jurisdiction might be obtained by serving the summons in the manner provided. In the case at bar the question is whether the Employers Mutual Insurance and Service Company was doing business in the light of the various statutory provisions relative to the doing of an insurance business within the state by foreign insurance companies. These statutory provisions constitute an exercise of the police power of the State of Minnesota; they are police measures that were enacted and stand on the statute books for the purpose of protecting those in this state desiring insurance protection of one kind or another against spurious and irresponsible foreign insurance companies. It is plainly the intent of these provisions to compel all insurers taking risks in this state to comply with our local laws and submit to our local courts. In this case a representative came into this state and solicited the insurance in question. The company issued the policies as a result of such solicitation. The policies were issued to protect respondent and others against losses bound to occur, if ever to occur, in this state. We contend the issuance of these policies standing alone constituted the transaction of an insurance business within the meaning of these statutory provisions; and that by reason of the non-compliance therewith, the receivers of the company cannot resort to our courts to enforce the payment of the assessment in question. Aside from the question of doing business, it is the policy of the state to require foreign insurance companies to comply with these statutory provisions before taking risks within the state. Where risks are taken without such compliance, the company taking them is not in position to resort to the courts of the state. The doctrine of state com-

ity will not be applied to an action on a contract at variance with the policy of the state.

The Minnesota Supreme Court discussed this policy in the light of the Benn case and said:

> "The policy of the legislature is expressed in G. S. 1923, Sec. 3314, as follows:
>
> 'It shall be unlawful for any * * * corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state.'
>
> G. S. 1923, Sec. 3722, also throws light on the subject. It permits a citizen of this state to take insurance in an unlicensed company by giving a bond to the insurance commissioner for the payment of a tax on the premium charged for the insurance. When the bond is given, the commissioner issues a license good for one year and the insurance is declared to be valid.
>
> Other statutory requirements need not be stated in detail. It is sufficient to say that they require, among other things, that a foreign insurance company must secure a license to do business in this state; deposit with the insurance commissioner a certified copy of its charter and by-laws and a statement showing its financial condition; file an instrument in the office of the commissioner appointing him, or his successor in office, its attorney in fact upon whom proofs of loss and process in any action or legal proceeding may be served; make a deposit of securities with the commissioner for the protection of Minnesota policyholders, or file a certificate by the insurance commissioner of the state of its organization that it has deposited with him securities in a required amount for the protection of all its policyholders. G. S. 1913, Sections 3309, 3591, 3592, 3593, 3595, and L. 1921, P. 573, c. 380.
>
> In the case at bar the risk insured against was one to be encountered in this state. It was incidental to the operation of defendant's printing establishment

in St. Paul. If there were a loss, it would be sustained in this state. The policy is not in the record and we do not know where the loss, if one occurred, was to be adjusted or paid. If the contract was to be performed in Maryland, it may be true that the courts of this state could not refuse to enforce it and that such a refusal would contravene certain provisions of the Federal Constitution. Stone v. Old Colony St. Ry. Co., 212 Mass. 459, 99 N. E. 218; N. Y. Life Ins. Co. v. Head, 234 U. S. 149, 34 Sup. Ct. 879, 58 L. Ed. 1259. In the present case there is no showing that the contract was not to be performed in Minnesota, hence these cases are not controlling.

We come now to Minn. Com. Men's Assn. v. Benn, supra. In that case a Minnesota corporation issued an accident and health certificate to Robert J. Benn of Montana. Upon his death his widow brought an action in a Montana court to recover the sum due under the certificate of membership. Service of the summons and complaint was made upon the secretary of state and insurance commissioner of Montana. The association did not appear or defend and judgment went against it by default. Thereafter Mrs. Benn brought an action in this state upon the Montana judgment. We held that the Montana court had jurisdiction to enter the judgment, and the case was carried to the United States Supreme Court. The opinion of Mr. Justice McReynolds sets out the facts as follows:

The only office maintained by the association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership which, when filled out, were sent to the home office and submitted to the board of directors for approval; Benn's application was sent by mail from Kalispell, Montana, to Minneapolis, was approved, and his certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertisement and through

the solicitation of older members, who were urged to furnish lists of prospects and to use their influence to increase the membership, but no member had authority to bind the association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors and losses were settled by checks on Minneapolis banks mailed from the home office. Upon this state of facts the court concluded that the association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on the state officers mentioned, hence a personal judgment against the association based on such service was void for want of jurisdiction.

In the case at bar an entirely different situation is presented. The insurance company has not been sued. Through its receivers, it is the plaintiff in an action brought against a citizen of this state to enforce an obligation incurred upon a contract alleged to have been made in another state, the subject matter of which was the insurance of a Minnesota corporation against losses it might sustain in carrying on its business within the state.

We conclude that Seamans v. Christian Bros. Mill Co. supra, should be followed and that we should give effect to the public policy of the state as expressed in the statutes to which we have referred, until the Supreme Court of the United States disposes of the question differently."

The situation presented in this case has been before the courts of several jurisdictions and we shall proceed to review a few of these cases.

In the case of Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065, the Wisconsin Mutual Fire Insurance Company was a corporation organized under the laws of the State of Wisconsin to carry on a mutual fire insurance business. It became insolvent and plaintiff was ap-

pointed receiver for it by the courts of that state. Defendant, a corporation organized under the laws of Minnesota, and doing business therein, procured from this insurance company a policy of insurance on its property situated in Minneapolis. This suit was brought to recover a balance of unpaid premium claimed to be due on the policy. One of the defenses alleged by defendant and sustained by the lower court was that the insurance company had never complied in any respect with the statutes of the State of Minnesota. Judgment was ordered for defendant, and from the judgment entered, plaintiff took an appeal to the Supreme Court.

The Supreme Court held that as the insurance company had not complied with the statutory requirements so as to be authorized to do business in Minnesota, it could not recover premiums on a contract made by it insuring property within Minnesota; and the court held further that it was immaterial whether such contract was made within or without the state.

The court, in part, said:

> "The contract of insurance was made by correspondence between the two corporations. The trial court found as a fact that this contract was made in this state. Appellant assails this finding as not supported by the evidence, but, from the view we take of it, the point is not material; as we are of the opinion that even if the contract was made in Wisconsin, as contended by appellant, we would still refuse to enforce it, as being contrary to the policy of our laws, and an attempt to evade those laws. Among the statutory provisions material here are the following sections of G. S. 1894:
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> * * *
>
> "These statutory provisions are policy regulations intended to protect people and property in this state against spurious and irresponsible insurance com-

panies. It is plainly the intent of these statutory provisions to compel all such insurers doing business in, or taking risks on property in, this state, to comply with our local laws and submit to our local courts. Neither can there be any doubt about the authority of the legislature to pass such laws. Paul v. Virginia, 8 Wall. 168; Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207. It is a general rule that a contract made in one state will be enforced in another state, though contrary to the laws or public policy of the latter state. 3 Am. & Eng. Enc. Law, 543. This rule is more especially applicable when no particular place of performance is contemplated by the contract, but the place of performance may be anywhere. It is also a general rule that where a contract is entered into in one state, to be performed in a certain other state, the validity of the contract will be determined by the law of the latter state. Id. 542, 544; Wharton, Confl. Laws, Sec. 398 et seq., 486. We will not attempt to discuss the many and complex distinctions that have arisen where these two rules came in conflict. Usually, in such a case of conflict of laws, it is little more than a question of determining the intention of the parties to the contract—whether they intended to be governed by the one law or the other. But cases arise where the parties are not thus at liberty to select which law they choose. See Wharton, Confl. Laws, Sec. 490-494.

"The laws or public policy of a state may prohibit the making of a certain contract, but it does not follow that if the contract is made elsewhere such state may not, within its borders, enforce the same by extending to it the comity which exists between states. But, again, the laws and public policy of the state may be such as to completely stamp out this comity, and prohibit within the jurisdiction of the state the enforcement of the contract. Especially is this so if, though the contract was made elsewhere, it was to be performed within the state. There are many cases extending this doctrine of comity to contracts of insurance made elsewhere, and insuring property in the

state in which the contract was enforced. See Wharton, Confl. Laws, Sec. 465-467. But, as before stated, it depends on the laws and public policy of such state whether or not it will thus enforce the contract. The laws and public policy may be such as to destroy this comity and prohibit such enforcement of the contract.

"We are of the opinion that the laws and public policy of this state in reference to the insuring of property are of this character. The restrictions in our statutes are so many, and the repressive character of the legislation such, that we must hold this to be the public policy of this state. This seems also to be the character of the insurance legislation in Iowa and Michigan, as appears by the cases of Seamans v. Zimmerman, 91 Iowa 363, 59 N. W. 290, and Seamans v. Temple Co., 105 Mich. 400, 63 N. W. 408, where this same receiver was defeated in attempts to collect unpaid premiums from citizens of those states. Neither does it make any difference that the insurer is a mutual company or that it is, as appellant claims, unincorporated. Neither is this decision in conflict with Ganser v. Fireman's Fund Ins. Co., 34 Minn. 372, 25 N. W. 943, where it was held that the insured can recover the loss even though the insurer has not complied with the statutory requirements so as to be authorized to do business in this state. The very object of these statutory provisions is the protection of the insured, and the parties are not in pari delicto. This disposes of the case, and renders it unnecessary to consider the other questions raised."

The rule of this case was recognized and applied by the court in the case of Langworthy v. Garding, 74 Minn. 325, 77 N. W. 207, where the court said:

"That plaintiff cannot recover in this proceeding unless the company he represents had complied with the requirements of the statute regulating the transaction of business in this state by foreign insurance companies is not questioned. Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065."

And also in the case of Swing v. Red River Lumber Co., 105 Minn. 336, 117 N. W. 442, where the court said:

> "The alleged statutory contingent liability was not authorized by the act under which the company was incorporated and organized, but by the amendment of 1888, which expressly provides that its provisions in this respect should not apply to mutual companies then doing business, unless they elected to reorganize as provided by the amendatory act. Swing v. Humbird, 94 Minn. 1, 101 N. W. 938. The same conclusion follows from the fact that the company was not authorized to do business in this state. Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065; Swing v. Weston, 140 Mich. 344, 103 N. W. 816."

See also:

*Thomas Mfg. Co. v. Knapp*, 111 Minn. 432, 112 N. W. 989;
*State v. Beardsley*, 88 Minn. 20, 92 N. W. 472;
*M. K. & T. Trust Co. v. Krumsieg*, 77 Fed. 32.

The courts of other jurisdictions have adopted the rule for which we contend.

In Presbyterian Ministers Fund v. Thomas, 126 Wis. 281, 105 N. W. 801, the court held, quoting from the syllabus:

> "Where a foreign insurance company has failed to comply with statutes imposing certain conditions and restrictions as conditions precedent to the right to make an insurance contract with a resident of the state, notwithstanding that the contract with the resident of the state is the contract of another state, the insurance company cannot recover thereon in the state."

In Rose v. Kimberly & Clark Co., 89 Wis. 545, 62 N. W. 526, the insurance contracts in questions were made outside of Wisconsin upon property within that state by a for-

eign company which had not complied with the laws of Wisconsin, and was thus debarred from doing business within that state. The suit was one brought by the receiver of the insurance company to recover an assessment made upon a policyholder. The lower court held the contract valid and ordered judgment for the plaintiff. This was reversed by the appellate court.

The court said:

"The object of this statute is so plain that it cannot be mistaken. It is to protect our citizens against irresponsible and worthless foreign companies of the very kind which we have now before us. The evil to be corrected is not the writing of a policy by an unlicensed company within this state alone, but the writing of such a policy at all. Bearing in mind the object of the statute and the evil to be corrected, it is very plain that the object will be largely defeated, and the evil will flourish as before, if it be held that companies without license can establish their agencies just outside of the state line and conduct their business by mail. Now, it will be observed that the legislature was not content with providing that no unlicensed company should make a contract of insurance within this state, but provided that no such company should, directly or indirectly, take risks or transact any business of insurance in this state. The writing of a policy of insurance upon property situated within this state would seem pretty clearly to be, in some degree at least, the transaction of insurance business in this state, whether the policy be written just within or just without the state line. It was said in Stanhilber v. Insurance Co., 76 Wis. 285, on page 291, 45 N. W. 221: 'A contract insuring property in this state necessarily involves the doing of business in this state, and hence is subject to the laws of this state.' We regard the remark as entirely correct, and fully as applicable to the present case as to the Stanhilber case. It is not meant

by this that the legislation in question has extra-territorial effect, or that it will invalidate a contract made in Illinois, but simply that when that contract is a contract insuring property within this state it is against the policy of our law, and will not be enforced by the courts of Wisconsin unless the conditions prescribed by our law have been complied with. In no other way can the manifest purpose and intent of the statute be reached; any different construction would render the law of little effect."

In Swing v. Cameron, 145 Mich. 175, 108 N. W. 506, the receiver of an insurance company which had not been authorized to do business in the state of Michigan brought suit on an insurance contract executed without the state of Michigan, protecting certain property situated within the state of Michigan from fire loss, to recover an assessment on the policy. The court held that the receiver was not entitled to maintain the action, due to non-compliance by the company with the statutes of Michigan.

In Seamans v. Zimmerman, 91 Ia. 363, 59 N. W. 290, the facts are set out in the opinion as follows:

"The plaintiff is the receiver of the Wisconsin Mutual Fire Insurance Company, which is a corporation organized under the laws of the state of Wisconsin, having its principal place of business in Milwaukee. It never had any office or agency in this state for the transaction of any business whatever. On the 20th day of June, 1890, the defendant made two written applications to the company at Milwaukee for insurance on certain property located at Guttenberg, in this state, where the defendant resided. The company accepted the applications in Milwaukee on the day specified, and issued to the defendant two policies of insurance, which were accepted by him in Milwaukee. The policies stipulated that the defendant became a member of the company, and liable to pay to it certain premiums and assessments. Losses were sustained by policyholders, and assessments were made on the defend-

ant in accordance with the terms of the policies, which are unpaid. The petition alleges that the policies are Wisconsin contracts, to be construed and enforced according to the laws of that state. The division of the answer involved in this appeal alleges that the company has had no authority or right at any time to do business, directly or indirectly, in this state, for the reason that it has failed and neglected to comply with the law relating to insurance companies contained in chapter 4, tit. 9, of the Code. The demurrer was directed to that division of the answer, and alleges that the facts therein stated do not constitute any defense to the cause of action set out in the petition, as the petition shows that the company is a Wisconsin corporation, and the contracts sued on were made in that state. The effect of the ruling on the demurrer was to hold that the facts alleged in the answer constitute a defense to the claim made by the plaintiff."

And the court, passing on the issue presented, said:

"The prohibition of section 1144 is directed not merely to the agents as such, but to the companies themselves. They are forbidden to take any risks in this state, either directly or indirectly. The general assembly intended the prohibition to reach as far as its jurisdiction extends. The power of the legislature of a state to make contracts like those under consideration void is not questioned. It was recognized in Insurance Co. v. Kinyon, supra. Comity does not require the enforcement of a contract valid where made but in violation of the law of the state where it is sought to be enforced. The provision of the statute under consideration was designed to protect the property owners of this state from irresponsible insurance companies, and the contracts in question belong to the class which the general assembly intended to prohibit. To hold that the company may recover the assessments would be an evident violation of the spirit and intention of the statute. The contracts are contrary to the policy of this state as expressed in the statute, and the courts of this state will not aid the company to enforce

them. Our conclusion finds support in the following authorities: Assurance Co. v. Rosenthal, 55 Ill. 86; Insurance Co. v. Stoy, 41 Mich. 401, 1 N. W. 877; Insurance Co. v. Harvey, 11 Wis. 394. The certificate of the trial judge does not show where the policies make the assessments in question payable, but we have, for the purposes of this appeal, assumed that the policies are Wisconsin contracts, designed to be performed there. What rights, if any, the policyholders might have under such policies, we do not find it necessary to determine. See, however, Pennypacker v. Insurance Co., 80 Iowa 57, 45 N. W. 408. We conclude that the district court rightly held that the facts set out in the division of the answer assailed by demurrer constitute a defense to the action. The order overruling the demurer is affirmed."

See also:

*Swing v. Munson,* 191 Pa. 582, 58 L. R. A. 223;
*Seamans v. Temple & Co.,* 105 Mich. 400, 63 N. W. 409.

## CONCLUSION

The Supreme Court of Minnesota, in refusing petitioners access to the Courts of Minnesota, did not deprive them of any right or privilege guaranteed by the Federal Constitution. They are without such right or privilege under the facts of the case. They are ordinary chancery receivers. Their power to sue does not extend to the Courts of Minnesota because beyond the jurisdiction of the Court appointing them. Viewed as quasi assignees of the defunct Employers Mutual Insurance and Service Company, they are without right to sue in the Courts of Minnesota on the contract in question, because of a failure on the part of the Company to comply with the laws of Minnesota before entering into such contract. The right of petitioners to sue in the Courts of Minnesota rests on comity and not on any provision of the Federal Constitution. The Minnesota Supreme Court having denied petitioners access to the Minnesota Courts as a matter of comity, petitioners are not in position to complain. They have no right as a matter of constitutional law to resort to such Courts.

It is respectfully submitted that the decision of the Minnesota Supreme Court should be affirmed.

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## APPENDIX.

### MINNESOTA STATUTES REFERRED TO IN BRIEF.

General Statutes of Minnesota, 1923:

"Section 3310. He (referring to commissioner of insurance) shall receive and hold in official trust deposits made by any domestic company in compliance with the laws of any other state, to enable it to do business in such state, and in like manner hold deposits made by a foreign company under any law of this state. * * *"

"Section 3311. The state department of banking and the state department of insurance shall use, for the safe keeping of securities except such securities as may for the convenience of the department of banking be kept in places designated by the superintendent of banks, such space in the safety deposit vault in the office of the state treasurer as may be agreed upon and assigned to such departments respectively, by the state treasurer."

"Section 3312. In this chapter, unless the context otherwise requires, 'company' or 'insurance company' shall include every corporation or association engaged in insurance as principal. 'Domestic' shall designate those incorporated in this state, and 'foreign' when used without limitations, those in any other state or country. * * *"

"Section 3313. Every company, domestic or foreign, shall file with the commissioner its acceptance of the provisions hereof, and by such changes, if any, as may be necessary, conform its charter or certificate of incorporation thereto, so far as same relate to such a company; and it and every company hereafter organized shall obtain from the commissioner his certificate that such charter or certificate of incorporation, and all proceedings thereunder, comply with law, which he shall indorse thereon when

approved, and thereupon each shall be governed by such provisions and those relative to corporations in general, so far as applicable and not otherwise specially provided."

"Section 3314. Insurance is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. It shall be unlawful for any person, firm or corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state."

"Section 3318. * * * No insurance company or association nor fraternal beneficiary association, not specifically exempted therefrom by law, shall transact the business of insurance in this state unless it hold a license therefor from the commissioner of insurance."

"Section 3319. No company in this state other than fire, marine or fire and marine, hail, farmers' mutual or real estate title insurance companies shall do business in this state unless it has on deposit with the insurance commissioner of this state as security for all its policyholders, stocks or bonds, of this state, or of the United States or bonds of any of the municipalities of this state, or personal obligations secured by first mortgage on real estate within this state, worth, exclusive of buildings, the amount of the lien, and bearing interest of not less than three per cent per annum, to an amount, the actual market value of which, exclusive of interest, shall never be less than one hundred thousand dollars, except in case of companies organized to insure bicycles against loss from theft, the amount of such deposits for such companies shall never be less than ten thousand dollars ($10,000), which stocks,

bonds or mortgages shall be retained by the insurance commissioner and be disposed of as directed by law.

Provided, however, that the deposit of mortgages on real estate shall not exceed the amount of fifty thousand dollars. As long as any policies of the depositing company remain in force, the insurance commissioner shall hold the said deposit as security for all holders of its policies. Provided, any insurance company of any other state of the United States may file with the insurance commissioner of this state a certificate of the insurance commissioner of such other state, that, as such officer, he holds in trust and on deposit for the benefit of all the policyholders of such company a deposit of not less than one hundred thousand dollars par value of such securities as are required or permitted to be deposited with him by the laws of such state, such securities to be of the character in which insurance companies are authorized to invest under the laws of this state, stating the items of the securities so held, and that he is satisfied that such securities are worth one hundred thousand dollars. No deposit shall be required in this state while the said deposit, so certified, remains."

"Section 3711. Any insurance company of another state, upon compliance with all laws governing such corporations in general, and with the foregoing provisions so far as applicable, and also with the following requirements, shall be admitted to do business in this state:

1. It shall deposit with the commissioner a certified copy of its charter or certificate of incorporation, and of its by-laws, and a statement showing its financial condition and business, verified by its president and secretary or other proper officers.

2. It shall furnish the commissioner satisfactory evidence of its legal organization and authority to transact the proposed business and that its capital, assets, deposits with the proper official of its own state, amount insured,

number of risks, reserve and other securities, and guaranties for protection of policyholders, creditors and the public, comply with those required of like domestic companies.

3. By a duly executed instrument filed in the office of the commissioner, it shall appoint him and his successors in office its lawful attorneys in fact, and therein irrevocably agree that legal process in any action or proceeding against it may be served upon them with the same force and effect as it personally served upon it, so long as any of its liability exists in this state.

4. It shall appoint, as its agents in this state, residents thereof, and obtain from the commissioner a license to transact business therein."

"Section 3713. That before any corporation, association or company, issuing policies of insurance of any character, and not organized or existing pursuant to the laws of this state, is admitted to or authorized to transact the business of insurance in this state, it shall, by a duly executed instrument, to be filed in the office of the insurance commissioner, constitute and appoint the insurance commissioner and his successor in office its true and lawful attorney, upon whom proofs of loss, any notice authorized or required by any contract with such company to be served on it, summonses and all lawful processes in any action or legal proceeding against it may be served, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state.

Said instrument shall contain a provision and agreement declaring that such company, association or corporation desires to transact the business of insurance in this state, and that it will accept a license therefor according to the laws of this state, and that it will not remove, or make application for removal, into any court of the United States

any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done therein.

In case of the failure of any such insurance company to comply with any of the provisions of this act, or if it shall violate any of the conditions or agreements contained in the instrument filed as aforesaid, its right to transact the insurance business in this state shall cease, and it shall be the duty of the insurance commissioner to immediately declare its license revoked; and in case of such revocation, said company shall not be again licensed to transact business in this state for the period of one year from date of such revocation."

"Section 3722. Whenever any person, firm or corporation desires to obtain insurance upon any property in this state in companies not authorized to do business therein, he or they shall give bond to the commissioner in such sum as he shall deem reasonable, with satisfactory resident sureties, conditioned that the obligors, on the expiration of a license to obtain such insurance, shall pay to the commissioner, for the use of the state, a tax of two per cent upon the gross premiums paid by such licensee. Thereupon the commissioner shall issue such license, good for one year, and all insurance procured thereunder shall be lawful and valid, and the provisions of all policies thereof shall be deemed in accordance, and construed as if identical in effect, with the standard policy prescribed in this chapter, and the insurers may enter the state to perform any act necessary or proper in the conduct of such business. Such bond may be enforced by the commissioner in his own name in any district court. The licensee shall file with the commissioner, on June 30 and December 31 annually, a verified statement of the aggregate premiums paid and returned premiums received on account of such insurance."

Laws of Minnesota 1921, Chapter 380,

"Section 1. * * * No person shall act or assume to act as an insurance agent or solicitor in the solicitation or procurement of applications for insurance, nor in the sale of insurance or policies of insurance, * * * until such person shall have obtained from the commissioner of insurance a license therefor, which license shall specifically set forth the name of the person so authorized to act as agent or solicitor and the class or classes of insurance for which he is authorized to solicit or countersign policies."

"Section 2. A license to any person to act as insurance agent for any insurer shall only be granted by the commissioner of insurance upon the written requisition of such insurer upon forms prescribed by the commissioner of insurance and the payment of a fee of two dollars ($2.00), in the case of a foreign insurer, and fifty cents in the case of a domestic insurer, and the filing of the application hereinafter provided for. Such license shall be issued for the term ending on the first day of March thereafter."